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\*\*E-filed 5/11/07\*\*

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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN JOSE DIVISION**

14 COY T. BUI, Derivatively )  
15 on Behalf of Nominal Defendant ) Case No. 5:07-cv-01349-JF  
16 ULTRATECH, INC., Plaintiff, ) STIPULATION AND [PROPOSED]  
17 DANIEL H. BERRY, WILLIAM G. ) ORDER CONSOLIDATING CASES FOR  
18 LEUNIS, III, ARTHUR W. ) ALL PURPOSES, APPOINTING LEAD  
19 ZAFIROPOULO, BRUCE R. WRIGHT, ) PLAINTIFFS AND LEAD COUNSEL  
JOHN E. DENZEL, ERIK SMITH, ) AND SETTING A SCHEDULE FOR  
ELLERY R. BUCHANAN, JAMES L. ) FILING OF CONSOLIDATED  
SCHRAM, JOEL F. GEMUNDER, ) COMPLAINT  
NICHOLAS KONIDARIS, VINCENT F. )  
SOLLITTO, JR., RICK TIMMINS, )  
GREGORY HARRISON, MICHAEL C. )  
CHILD, JOSEPH PARKINSON, )  
KENNETH LEVY, LARRY R. CARTER, )  
and THOMAS D. GEORGE, )  
24 and )  
25 ULTRATECH, INC., Nominal Defendant. )  
26 )  
27 )  
28 *TO BE CONSOLIDATED WITH*

1 CHARLES B. EHRENBERG, Derivatively ) Case No. 5:07-cv-01811-JF  
 2 on Behalf of Nominal Defendant )  
 2 ULTRATECH, INC., )  
 3 Plaintiff, )  
 4 v. )  
 5 DANIEL H. BERRY, WILLIAM G. )  
 6 LEUNIS, III, ARTHUR W. )  
 7 ZAFIROPOULO, BRUCE R. WRIGHT, )  
 8 JOHN E. DENZEL, ERIK SMITH, )  
 9 ELLERY R. BUCHANAN, JAMES L. )  
 10 SCHRAM, JOEL F. GEMUNDER, )  
 11 NICHOLAS KONIDARIS, VINCENT F. )  
 12 SOLLITTO, JR., RICK TIMMINS, )  
 13 GREGORY HARRISON, MICHAEL C. )  
 14 CHILD, JOSEPH PARKINSON, )  
 15 KENNETH LEVY, LARRY R. CARTER, )  
 16 and )  
 17 ULTRATECH, INC., )  
 18 Nominal Defendant. )  
 19 \_\_\_\_\_

20 WHEREAS, there are two related shareholder derivative actions on behalf of nominal  
 21 defendant Ultratech, Inc. ("Ultratech") pending before this Court:

Abbreviated Case Name	Case Number	Date Filed
<i>Bui v. Berry, et al.</i>	C-07-01349-JF	03/07/07
<i>Ehrenberg v. Berry, et al.</i>	C-07-01811-JF	03/30/07

22 WHEREAS, the two related Ultratech shareholder derivative actions arise out of the same  
 23 transactions and occurrences and involve the same or substantially similar issues of law and fact;  
 24 and, therefore, should be consolidated for all purposes under Federal Rule of Civil Procedure 42(a);

25 WHEREAS, Defendants agree to the consolidation of the above-captioned actions for all  
 26 purposes and do not oppose the appointment of Lead Plaintiffs and Lead Counsel.

27 IT IS STIPULATED AND AGREED by plaintiffs and defendants, through their respective  
 28 counsel of record, as follows:

## 29 CONSOLIDATION OF ACTIONS

30 1. The following actions are hereby consolidated for all purposes, including pretrial  
 31 proceedings, trial and appeal:

STIP & [PROPOSED] ORDER CONSOL CASES, APPOINTING LEAD DERIV PLTF & LEAD COUNSEL & SCHEDULE FOR FILING OF CONS COMPLAINT	2
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	<b>Abbreviated Case Name</b>	<b>Case Number</b>	<b>Date Filed</b>
1	<i>Bui v. Berry, et al.</i>	C-07-01349-JF	03/07/07
2	<i>Ehrenberg v. Berry, et al.</i>	C-07-01811-JF	03/30/07

4       2. The caption of these consolidated actions shall be "*In re Ultratech, Inc. Derivative*  
5 *Litigation*" and the files of these consolidated actions shall be maintained in one file under Master  
6 File No. C-07-1349-JF. Any other actions now pending or later filed in this Court which arise out of  
7 or are related to the same facts as alleged in the above-identified cases shall be consolidated for all  
8 purposes, if and when they are brought to the Court's attention.

9           3. Every pleading filed in the consolidated actions, or in any separate action included  
10 herein, shall bear the following caption:

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

14 In re ULTRATECH, INC. DERIVATIVE LITIGATION ) Master File No. 5:07-cv-01349-JF  
15 \_\_\_\_\_ )  
16 This Document Relates To: )

17       4. When a pleading is intended to be applicable to all actions governed by this Order,  
18 the words "All Actions" shall appear immediately after the words "This Document Relates To:" in  
19 the caption set out above. When a pleading is intended to be applicable to only some, but not all, of  
20 the consolidated actions, this Court's docket number for each individual action to which the pleading  
21 is intended to be applicable and the abbreviated case name of said action shall appear immediately  
22 after the words "This Document Relates To:" in the caption described above (e.g., "No. 5:07-cv-  
23 01349-JF, *In re Ultratech, Inc. Derivative Litigation.*").

24       5. A Master Docket and a Master File hereby are established for the above consolidated  
25 proceedings and for all other related cases filed in or transferred to this Court. Separate dockets shall  
26 continue to be maintained for each of the individual actions hereby consolidated, and entries shall be

1 made in the docket of each individual case in accordance with the regular procedures of the clerk of  
2 this Court, except as modified by this Order.

3       6. When a pleading is filed and the caption shows that it is applicable to "All Actions,"  
4 the clerk shall file such pleading in the Master File and note such filing on the Master Docket. No  
5 further copies need be filed, and no other docket entries need be made.

6       7. When a pleading is filed and the caption shows that it is to be applicable to fewer than  
7 all of the consolidated actions, the clerk will file such pleading in the Master File only but shall  
8 docket such filing on the Master Docket and the docket of each applicable action.

9       8. When a case which properly belongs as part of *In re Ultratech, Inc. Derivative*  
10 *Litigation* is filed in this Court or transferred to this Court from another court and assigned to Judge  
11 Fogel, the clerk of this Court shall:

12           (a) Place a copy of this Order in the separate file for such action;  
13           (b) Mail to the attorneys for the plaintiff(s) in the newly-filed or transferred case a  
14 copy of this Order and direct that this Order be served upon or mailed to any new defendant(s) or  
15 their counsel in the newly-filed or transferred case; and

16           (c) Make an appropriate entry on the Master Docket. This Court requests the  
17 assistance of counsel in calling to the attention of the clerk of this Court the filing or transfer of any  
18 case which properly might be consolidated as part of *In re Ultratech, Inc. Derivative Litigation*.

## 19 **APPOINTMENT OF LEAD PLAINTIFFS AND LEAD COUNSEL**

20       9. Plaintiffs, Coy T. Bui and Charles B. Ehrenberg shall be appointed Lead Plaintiffs.

21       10. The law firm Schiffrin, Barroway, Topaz & Kessler, LLP shall be appointed Lead  
22 Counsel for plaintiffs in the consolidated *Ultratech* shareholder derivative actions.

23       11. Lead Counsel shall have authority to speak for plaintiffs in matters regarding pretrial  
24 and trial procedure and settlement negotiations, and shall make all work assignments in such manner  
25 as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or  
26 unproductive effort.

27       12. Lead Counsel shall be responsible for coordination of all activities and appearances  
28 on behalf of plaintiffs and for the dissemination of notices and orders of this Court. No motion,

1 request for discovery or other pretrial proceedings shall be initiated or filed by plaintiffs except  
2 through Lead Counsel.

3       13. Lead Counsel also shall be available and responsible for communications to and from  
4 this Court. Lead Counsel shall be responsible for the creation and maintenance of a master service  
5 list of all parties and their respective counsel.

6       14. Defendants take no position on the appointment of Lead Plaintiffs and Lead Counsel.

7       15. Defendants' counsel may rely upon all agreements made with Lead Counsel, or other  
8 duly authorized representatives of plaintiffs, and such agreements shall be binding on plaintiffs.

9 **SCHEDULE**

10       16. Plaintiffs shall have seven days from the entry of this Order to file a Consolidated  
11 Complaint which will supersede all existing complaints filed in these actions. Defendants need not  
12 respond to any of the pre-existing complaints. Service, pursuant to Rule 4 of the Federal Rules of  
13 Civil Procedure, of any of the pre-existing complaints on any of the defendants, or their counsel,  
14 shall constitute sufficient service on that defendant. Plaintiffs shall serve the Consolidated  
15 Complaint counsel for defendants, who shall attempt to obtain authority to accept service on each  
16 individual defendants' behalf. In the event that counsel is unable to obtain such authority, plaintiffs'  
17 counsel will be promptly notified.

18       17. Each defendant shall answer or otherwise respond to the Consolidated Complaint no  
19 later than 30 days from the date of filing. In the event that defendants file and serve any motion  
20 directed at the Consolidated Complaint, plaintiffs shall file and serve their opposition no later than  
21 30 days after the service of defendants' motion. If defendants file and serve a reply to plaintiffs'  
22 opposition, they will do so no later than 15 days after service of the opposition.

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1 DATED: May 10, 2007

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3 SCHIFFRIN, BARROWAY, TOPAZ &  
4 KESSLER, LLP

5 \_\_\_\_\_  
6 /s/ Robin Winchester  
7 ROBIN WINCHESTER

8  
9 280 King of Prussia Road  
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11 Telephone: 610/667-7706  
12 610/667-7056 (fax)

13 DATED: May 10, 2007

14 MORRISON & FOERSTER, LLP

15 \_\_\_\_\_  
16 /s/ Ken Kuwayti  
17 DARRYL P. RAINS  
18 KEN KUWAYTI

19 755 Page Mill Road  
20 Palo Alto, CA 94304-1018  
21 Telephone: 650/813-5600  
22 650/494-0792 (fax)

23 \* \* \*

24 **ORDER**

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 DATED: 5/11/07

27  
28   
UNITED STATES DISTRICT JUDGE  
JEREMY FOGEL

1                   **Attestation Pursuant To General Order 45**

2                   I, Alan R. Plutzik, attest that concurrence in the filing of this document has been obtained  
3 from the other signatory. I declare under penalty of perjury under the laws of the United States  
4 that the foregoing is true and correct. Executed this 10<sup>th</sup> day of May, 2007 at Walnut Creek,  
5 California.

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7                   /s/       Alan R. Plutzik  
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